



Common Sense Initiative

Mike DeWine, *Governor*
Jon Husted, *Lt. Governor*

Joseph Baker, *Director*

MEMORANDUM

TO: Mandi Payton, Ohio Environmental Protection Agency

FROM: Jacob Ritzenthaler, Business Advocate

DATE: November 20, 2023

RE: CSI Review – Beneficial Use Rules (OAC 3745-27-05, 3745-599-01, 3745-599-02, 3745-599-03, 3745-599-05, 3745-599-10, 3745-599-20, 3745-599-25, 3745-599-30, 3745-599-35, 3745-599-60, 3745-599-200, 3745-599-210, 3745-599-220, 3745-599-310, 3745-599-320, 3745-599-330, 3745-599-334, 3745-599-335, 3745-599-340, 3745-599-345, 3745-599-350, 3745-599-360, 3745-599-370, 3745-599-400, and 3745-599-410)

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

This rule package consists of thirteen amended rules and thirteen no-change proposed by the Ohio Environmental Protection Agency (OEPA) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on September 26, 2023, and the public comment period was held open through October 26, 2023. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on September 26, 2023.

Ohio Administrative Code (OAC) 3745-27-05 sets forth requirements for solid waste disposal. The rule is amended to update the classification of beneficial use byproducts to remove a list of specific materials. OAC Chapter 3745-599 establishes requirements for the beneficial use of wastes. OAC 3745-599-01 authorizes beneficial use of waste products and is amended to reference beneficial use byproducts found in 40 CFR Part 241 and drinking water treatment material. OAC 3745-599-02 lists definitions used throughout the chapter and is amended to include a new definition for household

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hazardous waste. OAC 3745-599-03 lists the materials incorporated by reference and includes amendments that update, remove, or amend references. OAC 3745-599-05 lists general exclusions and is amended to add additional materials, including asbestos-containing waste material, coal mining and reclamation materials, construction and demolition debris, mixed solid waste, household hazardous waste, certain dredge material, infectious waste, manure, polychlorinated biphenyls, radioactive waste, scrap tires, and yard waste. OAC 3745-599-10 sets forth the authorized uses for beneficial use products, including use of these materials as construction material and fuel. The rule is amended to update the rule title and references to 40 CFR 241. OAC 3745-599-20 establishes authorization prohibitions for beneficial use and harbor sediment, including prohibitions against beneficial use that would endanger public health or the environment, discharge or be placed into waters, as well as requirements for authorization documents. The rule is proposed without amendments.

OAC 3745-599-30 sets forth requirements for the relationship between authorizing documents, rules, and the authority of the OEPA Director, and is proposed without amendments. OAC 3745-599-35 requires beneficial use activities to be conducted for legitimate purposes and that documentation of legitimate beneficial use be provided upon request. The rule is proposed without amendments. OAC 3745-599-60 lists the approved procedures for sampling and characterizing beneficial use byproducts and is amended to update the methods used for characterization. OAC 3745-599-200 establishes the procedure for granting and revoking a general beneficial use permit, including the uses of permits and the criteria necessary for a permit to be granted. The rule is amended to remove language that references federal rules and statutory provisions that are incorporated by reference. OAC 3745-599-210 and 3745-599-220 establish requirements for submitting notice to obtain coverage under a general beneficial use permit and general requirements for coverage. These rules are proposed without changes.

OAC 3745-599-310 provides the procedure for applying for an individual beneficial use permit and is proposed without changes. OAC 3745-599-320 sets forth requirements for the issuance of an individual beneficial use permit and is amended to remove language that references federal rules and statutory provisions that are incorporated by reference. OAC 3745-599-330 concerns the notice of necessary information for those receiving beneficial use byproducts and is proposed without amendments. OAC 3745-599-334 and 3745-599-335 set forth reporting and recordkeeping obligations for generators and distributors, including information concerning quantities and locations of byproducts and relevant contact information. These rules are proposed without changes. OAC 3745-599-340 establishes requirements for the initial characterization demonstration for individual permits and requires that applicants submit information regarding descriptions of the characteristics and constituents of byproducts, and analyses methods. This rule is proposed without changes. OAC 3745-599-345 sets forth the requirements for the compliance demonstration for individual permits, which is proposed without amendments. OAC 3745-599-350 concerns changes to permits, which

may require additional characterization or provide written notice to OEPA, and is proposed without amendments. OAC 3745-599-360 and 3745-599-370 concern the renewal procedure and the process for denial or revocation of an individual beneficial use permit. These rules are proposed without changes. OAC 3745-599-400 and 3745-599-410 establish requirements for the authorization of harbor sediment, including Lake Erie dredge that is not a hazardous waste. These rules are amended to remove language related to federal rules and statutory provisions.

During early stakeholder outreach, OEPA sent the proposed rules to industry stakeholders for feedback. Several stakeholders submitted comments during this time, which prompted OEPA to amend the rules to allow the beneficial use of additional materials. During the CSI public comment period, OEPA received four comments from stakeholders. Three comments, from the American Water Works Association (Ohio Section), Ohio Manufacturer's Association, and Verdantas LLC supported the proposed amendments. In response to a comment received from the Columbus Department of Public Utilities, OEPA amended the rules to clarify between the eligibility of drinking water treatment material and harbor sediment. OEPA also provided clarification where appropriate.

The business community impacted by the rules includes any business that intends to beneficially use waste materials in lieu of disposal. The adverse impacts created by the rules include the costs associated with applying for a beneficial use permit and the proper use and storage of materials. Application fees cost \$200 for general beneficial use permits and \$350 for individual permits. Permit holders are also required to maintain records, submit information when recharacterizing beneficial use materials, and complete annual compliance demonstrations. OEPA notes that the beneficial use program is voluntary. OEPA states that the adverse impacts created by the rules are necessary to provide a consistent and safe process for approving the usage of beneficial use byproducts.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that OEPA should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.